



**Invitation for Bid 744-06  
Contracted HVAC Maintenance, Blacksburg Transit**

Title Page,	Page 1
Bid Schedule	Page 3
General Terms & Conditions	Page 3
1. Envelope Identification	
2. Bid Submittal	
3. Bid Opening	
4. Mistakes in Bids	
5. Pricing Errors	
6. Withdrawal of Bid Due to Error	
7. Denial of Withdrawal of Bid	
8. Bid Bond	
9. Performance Bond	
10. Liquidated Damages	
11. State Corporation Commission	
12. Insurance	
13. License Requirement	
14. Qualifications	
15. Award Criteria	
16. Multiple Awards	
17. Announcement of Award	
18. Protest of Award	
19. Clarification of Terms	
20. Addenda	
21. Bidding Schedule	
22. Progress Schedule	



23. Conditional Bids
24. Acceptance of Bids
25. Changes, Additions, Deletions
26. Proprietary Information or Trade Secrets
27. Quantities
28. Delivery
29. Defective Items
30. Transportation & Packaging
31. Material Safety Data Sheets
32. Non Appropriation
33. Inspection of Job Site
34. Bidder's Responsibility
35. Use of Brand Names
36. Tax Exempt Status
37. Payment
38. Valid Contract
39. Default
40. Termination of Contract
41. Laws and Regulations
42. Applicable Laws and Courts
43. Audit
44. Award
45. Anti-Trust
- 46 Tie Bidding
47. Ethics in Public Contracting
48. Debarment Status
49. Anti-Discrimination
50. Indemnification
51. Immigration Reform and Control Act
52. Drug free Workplace
53. Cooperative Procurement
54. Copyright
55. Ownership of Artwork, Negatives, etc.
56. Intellectual Property
57. Nonvisual Access to Technology
58. Contractual Disputes

Specifications

Bid Form

Federal Requirements

Page 14

Page 16

Page 22





**TOWN OF BLACKSBURG, VIRGINIA**  
141 Jackson Street  
Blacksburg, VA 24060  
(540) 961-1140/39 951-4381  
Fax (540) 961-1514  
bpreas@blacksburg.gov

### **FORMAL INVITATION FOR BID**

<b>BID TITLE</b> HVAC Maintenance, Blacksburg Transit	<b>BID NUMBER</b>  <b>IFB744-06</b>
<b>ISSUE DATE:</b> June 3, 2006	<b>BID OPENING DATE AND TIME:</b> <b>JUNE 28, 2006 3:00 PM</b>
<b>REQUIRED BY:</b> Upon bid award	<b>DELIVER TO:</b> 2800 Commerce Street, Blacksburg, VA 24060
<b>LAST DATE FOR WRITTEN, TECHNICAL QUESTIONS:</b> June 20, 2006	<b>DATE ADDENDA WILL BE POSTED ON THE TOWN'S WEB SITE:</b> June 21, 2006
<b>BID BOND REQUIRED:</b> None	<b>PRE-BID MEETING:</b> None
<b>PAGE 3 OF 28 PAGES</b>	

The Town of Blacksburg, Virginia is requesting sealed bids for contracted maintenance on the heating, ventilation and air conditioning systems at Blacksburg Transit. The attached specifications are submitted for your review and consideration.

Individuals with disabilities who require assistance or special arrangement in order to bid, please contact us. We require that you provide at least 48 hour notice so that reasonable efforts may be made to provide the proper arrangements. You may be requested to specify the nature of any accommodation or assistance which may be required for your participation

The Town shall provide the mechanism for the evaluation of all information received, the final determination of responsible Offerors and reserves the right to waive informalities and irregularities and to accept or reject any or all bids.

Bonnie B. Preas, CPPO, CPM  
Purchasing Manager



## GENERAL TERMS & CONDITIONS

**1. ENVELOPE IDENTIFICATION:** The signed Bid Form and all other required documents must be returned in sealed envelope. The Bidder shall clearly mark on the **outside** of the envelope, SEALED BID, include the bid number and subject, bid opening date and time, and the bidder's complete mailing address, and Contractor's State License Number, Class of License, and Expiration Date.

The Town will not be responsible for premature opening or late arrival of bids improperly addressed or identified. If a bid is mailed in an envelope, not as specified, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the bid to be disqualified. The Town reserves the right to declare such a bid as non-responsive. Sealed bids may be hand delivered to the designated location.

**2. BID SUBMITTAL:** Bids must be delivered to the Town of Blacksburg Purchasing Agent, 141 JACKSON STREET, Blacksburg, Virginia 24060 by the stated opening date and time. Two copies of your bid price form are required.

**3. BID OPENING:** Bids shall be publicly opened and read aloud in the presence of one or more witnesses at the time and place designated. The amount of each bid, together with the name of each bidder, shall be recorded. The record on each bid shall be open to public inspection.

No statement or notation whatsoever, written, printed, typed or otherwise set out on any bid envelope, including any addition or deduction in contract price, shall be recognized or considered in the review and tabulation of any bid or offer or for any other purpose.

### **4. MISTAKES IN BIDS.**

**Correction:** Except as herein provided, no plea or claim of mistake shall be available to a bidder for recovery of any deposit or security required to be paid or posted or as a defense in any legal proceeding for the failure, neglect or refusal of the bidder to (1) execute a contract that has been awarded by the Town, (2) accept a purchase order issued by the Town to a bidder in response to a bid submitted by such bidder, or (3) perform in accordance with the terms, specifications and conditions of a contract.

**a. Mistakes Discovered Before Opening.** A bidder may correct mistakes discovered before the time and date set for receipt of bids by withdrawing and replacing or by correcting the bid.

#### **b. Mistakes Discovered After Opening But Before Award**

**Informality.** An informality is a minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bids, or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia*, § 2.2-4301). The procuring Town may, in its sole discretion, waive such informalities or permit the bidder/offeror to correct them, whichever procedure is in the best interest of the Town. Examples include the failure of a bidder/offeror to:

Return the number of signed bids/proposals required by the solicitation.

Sign the face of the bid/proposal in the space provided, but only if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/ offeror's intent to be bound.

Acknowledge receipt of an addendum to the solicitation, but only if it is clear from the bid/proposal that the bidder/offeror received the addendum and intended to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

**c. Judgment Errors.** Bids may not be withdrawn if the mistakes are attributable to errors in judgment, nor may such mistakes be waived or corrected.

#### **d. Nonjudgmental Mistakes**

**Mistakes Where the Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident in the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident in the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.



e. **Mistakes Where the Intended Correct Bid is Not Evident.** A bidder may be permitted to withdraw a low bid if a mistake is clearly evident from the bid documents submitted by the bidder and/or a comparison with other bids.

f. **Mistakes Discovered After Award.** Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or purchase order.

**5. PRICING ERRORS:** In case of an error in price extension, the firm fixed unit price shall govern

**6. WITHDRAWAL OF BID DUE TO ERROR:**

A Bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

The Bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and submit bid "work papers" with said notice.

No bid may be withdrawn under this section when the result would be the awarding of the Contract on another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

**7. DENIAL OF WITHDRAWAL OF BID.** If the Town denies the withdrawal of a bid, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. The decision denying withdrawal of a bid shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision.

**8. BID BOND OR GUARANTEE:** None required.

**9. PERFORMANCE AND PAYMENT SECURITY:** At contract award, a performance bond in the amount of 100% of the contract price will be required.

**10. LIQUIDATED DAMAGES:** Does not apply.

**11. STATE CORPORATION COMMISSION:** Vendors submitting as corporations MUST be licensed through the Virginia State Corporation Commission as corporations authorized to business in Virginia

**12. INSURANCE**

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Workers' Compensation - Statutory requirements and benefits.
2. Employer's Liability - \$100,000.



3. Commercial General Liability - \$2,000,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Town must be named as additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

If this bid is for parking facilities and garages for motor vehicle maintenance contracts, the following coverages are to be included - Products, Completed Operations Coverage and Garagekeeper's Liability.)

4. Automobile Liability - \$1,000,000 - Combined single limit. (Only used if motor vehicle is to be used in the contract.)

By signing and submitting a bid for this solicitation, the Bidder certifies that if awarded the contract, it will have the following insurance coverage **at the time the work commences**. Additionally, it will maintain these during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in the Commonwealth of Virginia by the Virginia State Corporation Commission.

A thirty-day written notice of cancellation or non-renewal shall be furnished by certified mail to the Purchasing Agent at the address indicated on the solicitation.

**13. LICENSE REQUIREMENT:** All firms having a business location or office in the Town of Blacksburg and out of town construction contractor's are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance and the BPOL license number must be indicated on the bid form. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL tax should be directed to the Finance Department, telephone number (540)961-1108

**14. QUALIFICATIONS:** The Bidders shall provide the names, addresses and telephone numbers of at least three (3) other firms or government agencies for whom a similar type of work has been performed in the past twelve (12) months. **BIDDERS MUST COMPLETE AND RETURN THE REFERENCES FORM.**

The Town of Blacksburg will consider, in determining the qualifications of a bidder, his record in performance of any contracts for the services into which he may have entered with the Town or with other public bodies or corporations; and, the Town of Blacksburg expressly reserves the right to reject the bid of such bidder, if such record discloses that said bidder, in the opinion of the Town, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.

The Town of Blacksburg will make an investigation as to the ability of the bidder to perform the work. The Town of Blacksburg reserves the right to reject any bid, if the evidence submitted by, or investigation of bidder, fails to satisfy the Town that such bidder is properly qualified by experience and financial status to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

The Town reserves the right to inspect bidder's facility, **PRIOR TO AWARD**, to satisfy questions regarding the bidder's capabilities.

**15. AWARD CRITERIA:** The Town reserves the right to accept or reject all or any part of the bids, waive minor technicalities or informalities and award the Contract to the lowest responsive, responsible Bidder to best serve the interest of the Town.

In order for the bid to be considered for award, all requested information on all the required forms should be provided. Bidders should review the documents prior to submission to insure that there are no omissions or blanks.

In determining the lowest responsible bidder, in addition to the price, the purchasing agent shall consider:

The ability, capacity and skill of the bidder to perform the contract or provide the service required.

Whether the bidder can perform the contract or provide the service promptly or within the time specified, with delay or interference.

The character, integrity, reputation, judgment, experience and efficiency of the bidder. The quality of performance of previous contracts or services.

The previous and existing compliance by the bidder with laws and policies relating to the contract or service.

The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.

The quality, availability and adaptability of the goods or services to the particular use required.



The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

The number and scope of conditions attached to the bid.

Service Schedule on all equipment.

If any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

In the event that the Total Base Bid from the lowest responsible bidder exceeds available funds, the Owner may negotiate the Total Base Bid amount with the apparent low bidder to obtain a contract price within available funds.

**16. MULTIPLE AWARDS:** The Town reserves the right to award multiple contracts for all of the specified item(s) or service(s) described by the invitation for bid to more than a single responsive and responsible bidder. Multiple contracts may also be awarded to the lowest responsive and responsible bidder for each required good, service, or equipment, described by the invitation for bid

**17. ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award, the Town will post such Notice on the bulletin board in the Purchasing Office area for a minimum of ten days.

**18. PROTEST OF AWARD:** Any bidder desiring to protest the award or decision to award this contract shall submit such protest in writing to the Purchasing Agent within ten days after public notice of award or the announcement of the decision to award, whichever occurs first.

**19. CLARIFICATION OF TERMS:** If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder should notify, **in writing**, the Purchasing Agent BY THE DATE SHOWN ON THE COVER PAGE. Revisions to the solicitation will only be made by addendum issued by the Purchasing Office. The town reserves the right to answer the questions in writing, by voice telephone, or by fax and will supply the same information to all known prospective bidders

**20. ADDENDA:** All addenda will be posted on the Town's web site – [www.blacksburg.gov/bid.php](http://www.blacksburg.gov/bid.php). All such addenda shall become a part of the solicitation documents, must be addressed in the bid and shall become a Contract Document. The Town accepts no liability for late nor non-receipt of addenda.

**21. BIDDING SCHEDULE:** See first page of Invitation for Bid Form for bidding schedule.

**22. PROGRESS SCHEDULE:** A Notice of Award or Notice of Intent to Award shall be issued, by the Purchasing Office, within five (5) working days of the decision to award. This notice of Award will designate the Project Manager and instructions on a pre-construction conference, if applicable. A meeting will be held with the apparent low bidder to determine scheduling and availability.

The successful bidder shall return executed contract documents, insurance certificates and performance, labor/material payment bonds to the Purchasing Agent within ten days.

In case of the failure of the Bidder to furnish the required forms, the Owner may consider the Bidder in default, in which case the Bid Bond shall become the property of the Owner.

The Owner within ten days of receipt of these documents will issue completely executed contractual documents.

The Notice To Proceed shall be included with the purchase order.

The Contractor shall commence work on the date as stated on the Notice to Proceed with full completion by the completion date as stated on same Notice. The time so stipulated shall be deemed to be of the essence of the Contract.

In instances when contractual documents, performance bonds are not required, a purchase order will be issued. The purchase order is a contract which includes the Owner's Invitation for Bid, the Owner's terms and conditions, the bidder's offer, and any addenda issued.

**23. CONDITIONAL BIDS:** A conditional or qualified bid shall not be accepted.



**24. ACCEPTANCE OF BIDS:** Bids submitted shall be binding for sixty (60) calendar days following the bid opening date, unless extended by mutual consent of all parties.

**25. CHANGES, ADDITIONS, DELETIONS:** No changes, additions, deletions or substitutions of specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges, or price will be permitted without the prior written approval from the Purchasing Office of the Town of Blacksburg.

**26. PROPRIETARY INFORMATION OR TRADE SECRETS:**

Offerors are advised that Section 2.2-4342 of the Code of Virginia, i.e., the Virginia Public Procurement Act, shall govern public inspection of all records submitted by the Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, **Offeror shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is needed.** Furthermore, the Offeror shall submit proprietary information under separate cover, and the Owner reserves the right to submit such information to the City Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to proprietary information; however, all information contained within the body of the proposal not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes.

**27. QUANTITIES:** The Town does not guarantee any minimum or maximum quantities. Quantities as specified are approximate and are prepared for the solicitation. The Town reserves the right to add or delete quantities.

**28. DELIVERY:** Delivery/Completion time is of the essence. Bids must show number of days required to complete the work. Failure to state delivery time obligates Bidder to complete delivery within the specified time frame. This information should be stated even though a delivery date/schedule is contained in the solicitation. Unrealistically short or long delivery promised may cause bid to be disregarded. Consistent failure to meet delivery promised without valid reason shall constitute a default and may cause removal from bid list. Unless otherwise specified, shipments shall be FOB Destination, Inside Delivery.

**29. DEFECTIVE ITEMS:** Items delivered which are defective will remain the property of the Bidder until the defect(s) have been corrected or replaced to the satisfaction of the Town. Unaccepted material shall be returned to the Bidder at the Bidder's expense.

**30. TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

**31. MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid or delivery for each chemical and/or compound offered and/or purchased. Failure on the part of the Bidder to submit such data may be cause for declaring the bid as non-responsive.

**32. NON APPROPRIATION:** Should funding not be available for subsequent years and this purchase is of a term contract nature, then any contract entered by the Town shall be declared null and void at the end of the then current fiscal year.

**33. INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Town.

**34. BIDDER'S RESPONSIBILITY:** Bidders shall examine the Contract Documents and shall exercise their own judgment as to the nature and total amount of all work to be done. No plea of ignorance of conditions that exist or that may later exist, or if conditions or difficulties that may be encountered in the work as a result of failure to make the necessary examination and investigation will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail the requirements of the contract documents, or will be accepted as a basis for any claims whatsoever for extra compensation

**35. USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer



named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Town to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

**36. TAX EXEMPT:** The Town is exempt from State Sales Tax and Federal Excise Tax. Tax Exemption Certificate shall be furnished upon request. The Town's Federal Tax ID number is 54-6001146.

**37. PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public Town is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

**Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve any Town of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the Town and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.



- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

**38. VALID CONTRACT:** In order for any contract document entered into with the Town of Blacksburg to be valid, it must be executed by an authorized person as defined in Chapter 2, Article V of the Code of the Town of Blacksburg, Virginia.

**39. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town of Blacksburg, after due written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Blacksburg may have.

**40. TERMINATION BY OWNER FOR CONVENIENCE:**

a. Owner may terminate this Contract, in whole or in part, at any time without cause upon giving the Contractor written notice of such termination. Upon such termination, the Contractor shall immediately cease Work. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

1. All amounts then otherwise due under the terms of this Contract,
2. Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Certificate for Payment through the date of termination,
3. Reasonable compensation for the actual cost of demobilization (if any) incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.

**41. LAWS AND REGULATIONS:** The Contractor shall give all notices and comply with all laws, ordinances, regulations, and lawful orders of any public authority bearing on the performance of the work.

The contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia (1950), as amended, relating to labor unions and the "right to work", and all Contractors and Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to this project shall comply with all of the said provisions.

The Contractor shall furnish the Town copies of affidavits upon request giving the original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the project site under this contract, if applicable.

The provisions of all regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia (1950), as amended, shall apply to all work under this contract.

**42. APPLICABLE LAWS AND COURTS:** Any Town contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the court of appropriate jurisdiction in Montgomery County, Virginia. The Contractor shall be responsible for compliance with all the laws of the Commonwealth of Virginia, all ordinances and regulations of the Town of Blacksburg and such other standards, codes, and regulations having application to the goods or services provided.



**43. AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Town of Blacksburg, whichever is sooner. The Town, its authorized agents, and/or State auditors shall have full access to and the right to examine any of the said materials during said period.

**44. AWARD:** The contract shall be awarded to the responsive bid submitted by the lowest responsible bidder. Unless canceled or rejected, a responsive bid from the lowest responsible shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, and if, time or economic considerations preclude resolicitation of work of reduced scope, the Town Manager or his designee may negotiate with the apparent low bidder to obtain a contract price within available funds. If both conditions set forth in the preceding sentence are not met, the Town shall not have the power to so negotiate.

**45. ANTI-TRUST:** By entering into a contract the Bidder conveys, sells, assigns, and transfers to the Town of Blacksburg all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Blacksburg under the contract.

**46. TIE BIDDING:** Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent or designee and/or investigation for Anti-Trust violations.

**47. ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 11-72 through 11-80 of the Virginia Public Procurement Act as set forth in the Code of Virginia(1950), as amended, shall be applicable to all contracts solicited or entered into by the Town of Blacksburg. A copy of these provisions may be obtained from the Purchasing Office upon written request.

By submitting their bids, all Bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction of any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**48. DEBARMENT STATUS:** By submitting a Bid or by the acceptance of a Town of Blacksburg Purchase Order, all firms certify that they are **not** currently debarred from doing business with or in the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from doing business with or in the Commonwealth of Virginia.

**49. ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E). The Town does not discriminate against faith based organizations.

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- . During the performance of this contract, the contractor agrees as follows:  
In every contract over \$10,000 the provisions in 1. and 2. below apply:
- . During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal



operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**50. INDEMNIFICATION:** The Bidder shall indemnify, defend and hold harmless the Town of Blacksburg, VA, its officers, officials, agents and employees from any claim, damages, injury, or death and action of any kind, whether at law or in equity, arising from or caused by the use of any materials, goods or equipment of any kind or nature furnished by the Bidder or any services of any kind or nature furnished by the Bidder. This undertaking shall not apply to damage, injury or death suffered in the performance of a construction contract caused by or resulting solely from the negligence of the Town, its agents or employees attributable to the sole negligence of the Town, its agents or employees.

**51. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals),(bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986

**52. DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**53. COOPERATIVE PROCUREMENT:** Other public bodies and agencies within the Commonwealth of Virginia may utilize this bid and subsequent contract award if the vendor is in agreement.

**54. COPYRIGHT:** No vendor may copyright any work contracted for by the Town and produced for the Town without the prior written consent of the Town.

**55. OWNERSHIP OF ARTWORK, NEGATIVES AND OTHER SUBMITTED INFORMATION:** All artwork, negatives, dies, overlays, or similar materials used to print a job shall be the property of the Town and must be returned to the Town upon completion.

Ownership of all data, materials, plates, die, and documentation originated and prepared for the Town pursuant to a solicitation shall belong exclusively to the Town and be subject to public inspection in accordance with the Virginia Freedom of Information Act.



**56. INTELLECTUAL PROPERTY:** The Bidder agrees to assign to the Town all worldwide right, title and interest in and to all works, including literary works, pictorial, graphic and sculptural works, architectural works, works of visual art, programming, codes and any other work that may be the subject matter of copyright protection; advertising and marketing concepts; models; drawings; created by the Bidder for the Town pursuant to this Contract. The parties agree that works created by the Bidder for the Town pursuant to this Contract are “works for hire.”

**57. NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the “Technology”) shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) non visual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network Services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (1) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

**58. CONTRACTUAL DISPUTES:** All claims which may arise under this agreement shall be resolved through the procedure set forth in Blacksburg Town Code section 16-506 “Contractual Disputes”

The contract entered into by the parties shall consist of this Invitation for Bid, the bid submitted by the Contractor, the Town of Blacksburg's Contract or Purchase Order, any change orders issued, addenda, all of which may be referred to as the Contract Documents.



## **SPECIFICATIONS**

**PURPOSE:** The intent and purpose of this solicitation is to establish a term contract for heating, ventilation, air conditioning and refrigeration (HVACR) maintenance services for equipment located at the Blacksburg Transit Complex for Blacksburg Transit located at 2800 Commerce Street in Blacksburg, VA, herein referred to as "Transit." The contract shall be for a one year period beginning July 1, 2006 with the option to renew annually if both parties are in agreement.

### **SCOPE OF SERVICE**

- A. **CONTRACTOR QUALIFICATIONS:** The contractor shall be able to demonstrate the ability to satisfactorily maintain and repair equipment of the type and to the degree specified herein:
- 1 Rooftop HVAC units manufactured by Trane
    - Ability to service, diagnose, repair, and overhaul
    - Oil and refrigerant analysis
    - Motor, shaft, and compressor repair
    - Electric troubleshooting of control systems
    - Ability to maintain a record of service, repair, and testing procedures as recommended by the manufacturer
  - 2 Tube type radiant heaters manufactured by Econovac and Reflect-o-ray
    - Ability to service, diagnose, repair, and overhaul
    - Ability to calibrate and adjust for maximum efficiency
    - Knowledge of manufacturer's procedure of heaters
  - 3 Belt-driven centrifugal roof exhaust fans
    - Ability to analyze bearing operation
    - Knowledge of motors, belts, and dampers associated with units
    - Ability to clean and keep ventilators at optimum operating efficiency
  4. Electronic Controls
    - Provide evidence of factory training on Trane Tracer Summit Building Management Systems Operation, advanced application and programming
    - Demonstrate the ability to service, diagnose, and repair the systems
    - Diagnose and repair problems with software, firmware, and hardware on Trane Tracer Summit systems, Unit Control Modules, and ZN-517 Controllers
    - Ability to remotely monitor and diagnose building problems through Trane Tracer Summit systems via modem
    - Comprehensive working knowledge of electronic controls as related to HVAC and ancillary equipment
    - Provide and install latest version of software upgrades for Trane Tracer Summit system
    - Provide a minimum of eight (8) hours on-site operators training to include verification of setpoints and programming parameters on all field panels
  5. Electric Controls
    - Comprehensive working knowledge of electrical control circuits as related to A/C and ancillary equipment



## 6. Systems Analysis

- 6.1 Ability to diagnose system problems as related to air movement and control systems.
- 6.2 Bidder must provide list of at least five (5) current customers for whom service on this type of equipment, i.e., Tracer Summit Building Management System, is performed.
- 6.3 Ability to interpret and verify design and make recommendations (engineering and technical services)
- 6.4 Ability to provide control drawings, plans and schematics as related to recommendation of systems analysis
- 6.5 Comprehensive working knowledge of supply air, return air, make-up and ventilation requirements, and economizers as related to outside air
- 6.6 Comprehensive working knowledge of humidification, dehumidification, latent and sensible heat loads, etc., applied to A/C engineering and design
- 6.7 On-staff personnel certified by NEBB or AABC shall perform annual verification of conformance to outside (fresh) air requirements in accordance with ASHRAE standards
- 6.8 On –staff Certified Energy Manager (CEM) required to perform an annual energy audit of building to identify and implement Energy Conservation Measures

## 7. Other Servicing Requirements

- Expertise and equipment required for vibration analysis and fan balancing
- Refrigerant recovery and reclamation services
- Expertise and equipment for chiller re-tubing

B. **WORK INCLUDED:** The contractor shall provide all labor, tools, materials, parts, equipment and all incidentals, (including all oil, gaskets, filters, lubricants and cleaners) required and/or implied for the complete and satisfactory maintenance and repair of the Transit's HVAC equipment. This work shall include, but not be limited to, scheduled maintenance, servicing, repairs, and modifications as recommended by the manufacturer and as required to keep the equipment in a first class operating condition.

1. **Routine Maintenance and Servicing** and repairs shall be performed on a regular basis, with repairs to be made as necessary, to keep equipment in top operating condition and to minimize malfunctions and down time. Scheduled maintenance shall be performed on a regular basis, and shall include all recommended and required testing, inspections, adjustments, cleaning, filter replacements, maintenance of fluid levels, as well as recommended start –up and shut –down servicing at the beginning and end of the operating season. Other maintenance and repairs required due to malfunctions occurring between scheduled maintenance calls shall be performed as necessary on a call basis. All maintenance and repairs are included in the Routine Maintenance and Servicing, and corresponding yearly rates, except that defined as non-routine repairs.

This work shall be performed for a set yearly rate, to include all equipment listed on Attachment B. HVAC EQUIPMENT INVENTORY. The yearly rate shall include all materials, parts, labor, and equipment required for the work.

**Bidders must submit with the bid their proposed service schedule for each piece of equipment. The service schedule is to include details of all work that will be performed monthly, quarterly, and annually, for servicing each piece of equipment**

Note: Contractor shall be responsible for providing all materials for scheduled maintenance, unless otherwise noted. Transit will provide materials for scheduled maintenance where noted only.

2. **Non-routine Repairs** shall be performed as required by the specified personnel at the hourly rates as bid, with materials and parts to be purchased from this contractor or other sources as necessary

3. **Emergencies.** The Contractor shall provide twenty-four (24) hour monitoring of the building HVAC equipment through the Trane Tracer Summit building automation system by using a licensed copy of Summit software. If an alarm condition is recorded, the Tracer Summit system shall notify the contractor and a qualified Refrigerant Mechanic shall respond within two (2) hours. The Refrigerant Mechanic shall first troubleshoot the alarm via modem and, if necessary, will arrive at the jobsite within four (4) hours of the alarm to take corrective action. Subcontracting will **NOT** be allowed to satisfy this requirement of the contract.



- C. **QUALITY OF WORKMANSHIP:** All work shall be quality work performed in a professional manner according to the standard of the industry. The air conditioning equipment under this contract shall be maintained as originally specified, designed, manufactured and installed. Any work that has to be corrected due to the Contractors faulty workmanship, equipment, tools, or materials shall be done at no additional expense to Transit

All work shall be performed in accordance with the Uniform Statewide Building Code of the Commonwealth of Virginia and the latest editions of the following reference codes and standards, whichever are more stringent:

Building Officials and Code Administrators (BOCA)  
American National Standards Institute (ANSI)  
American Society of Testing Materials (ASTM)  
American Society of Mechanical Engineers (ASME)  
Sheet Metal and Air Conditioning Contractors National Association (SMACNA)

- D. **PERSONNEL QUALIFICATIONS:** All personnel used by the contractor for the performance of this work shall be properly trained and qualified for work of this type and shall have the minimum ability and experience required for this work. Transit reserves the right to refuse to accept services from any personnel deemed by Transit to be unqualified, disorderly, or otherwise unable to perform assigned work. Upon request by Transit, the contractor shall provide evidence of qualifications for any personnel performing work under this contract. Subcontracting will **NOT** be allowed to satisfy the personnel requirements of this contract.
1. **Refrigerant Mechanics** shall have factory certified training from Trane. The contractor shall have at least two (2) Refrigerant Mechanics with factory-certified training on Trane Tracer Summit building management system operation and programming. This requirement may be satisfied with as few as two (2) Refrigerant Mechanics or as many as six (6) Refrigerant Mechanics, depending on individual certifications. The Refrigerant Mechanics shall be qualified and certified as “journeyman” in building related mechanical operations by the Commonwealth of Virginia. At least one (1) refrigerant mechanic shall be qualified and certified as a “master” in building related mechanical operations by the Commonwealth of Virginia. The Refrigerant Mechanics shall also be certified by the applicable governing agency in recycling and recovery of refrigerants. The Refrigerant Mechanics shall have a minimum of five (5) years verifiable experience on the equipment described herein and be fully trained on the operation and remote access of the Trane Tracer Summit Building Management System.
  2. **Mechanical Engineers** shall be responsible for performing Diagnostic Survey Work on an “as-needed” consultation basis. The cost for the Mechanical Engineering services shall be included in the Contractor’s prices listed in the Pricing Schedule. The Contractor shall have in his employ a minimum of two (2) Mechanical Engineers, one (1) of which shall be licensed professional Engineers registered under the regulatory authority of the Commonwealth of Virginia. The Mechanical Engineers shall have a minimum of five (5) years experience in the design and maintenance of HVAC systems.
  3. **Geographic Requirements-** The contractor shall retain in his employee all the minimum professional personnel requirements as outlined herein with on site response time within 60 minutes. At least one (1) Refrigerant Mechanic shall be able to respond on site within thirty minutes.

- E. **MATERIALS AND PARTS:** All materials and parts are included in the yearly rate for routine maintenance and servicing. For non-routine repairs, materials and parts may be purchased from this contractor or others at the sole discretion of Transit. Materials and parts shall be of equivalent material, strength and design as replaced material or part, and shall be new, top quality,



and made by or recommended by the original manufacturer of the replaced part or material. Materials and parts purchased from the contractor shall be at contractor's list price less 10%.

F. MISCELLANEOUS:

- Bidders must submit evidence of qualifications with bid including training certificates, certifications, business license, and business references.
- Repair parts and labor coverage is included on Trane Tracer Summit Building Management System for the term of this agreement
- Software upgrades and service packs for Tracer Summit Building Management Systems shall be provided as available from the manufacturer



## Attachment B

QTY.	DESCRIPTION	MODEL NUMBER	SERIAL NUMBER
1	TRANE GAS/ELECTRIC PKG. UNIT (AC-3)	YCP030	N/A
1	TRANE GAS/ELECTRIC PKG. UNIT (AC-4)	YCH060	N/A
2	TRANE GAS/ELECTRIC PKG. UNITS (AC-5&6)	YCH092	N/A
1	TRANE GAS/ELECTRIC PKG. UNIT (AC-7)	YCH102	N/A
1	TRANE SPLIT SYSTEM (HP-1)	2TWA2048	N/A
1	EMI DUCTLESS MINI-SPLIT SYSTEM	N/A	N/A
23	TRANE VAV BOXES	VADA	N/A
2	ELECTRIC WALL-MOUNTED UNIT HEATERS	UHWA	N/A
3	ELECTRIC DUCT HEATERS	N/A	N/A
1	ELECTRIC WALL FIN UNIT	EWFB	N/A
1	TRACER SUMMIT BLDG. MGMT. SYSTEM	BMTX	N/A
1	TRANE PACKAGE UNIT	YCD180A	E40142742D
1	TRANE PACKAGE UNIT	YCD150A	E41143193D
25	<b>GAS RADIANT HEATERS W/ 9 blowers</b>		
1	VEHICLE EXHAUST FAN	<b>BIBI5OR - TE</b>	
1	VEHICLE EXHAUST FAN	<b>120 TCNH</b>	
1	EXHAUST FAN FOR PIT	<b>BSQ -100-4-X</b>	



2	<b>REFRIGERATED AIR DRYERS</b>	<b>NCW 55 &amp; R20A</b>	
5	ROOF MOUNTED EXHAUST FANS	GB 420-15-X	
4	ROOF MOUNTED EXHAUST FANS	GB 420-20	
9	ROOF MOUNTED EXHAUST FANS	GB 360-10	
2	ROOF MOUNTED EXHAUST FANS	GB 140-4	
1	ROOF MOUNTED EXHAUST FAN	GB 100-4	
1	ROOF MOUNTED EXHAUST FAN	GB 260-5-X	
1	ROOF MOUNTED EXHAUST FAN	6-70-6-X	
1	ROOF MOUNTED EXHAUST FAN	6-095-6-X	
1	TRANE electric heater in transmission room	UHEC 033DOCO	
1	TRANE electric heater in rebuild room	UHEC 073DOCO	
1	TRANE electric heater in compressor room	UHEC 103DOCO	
1	TRANE electric heater in oil room	UHXAO33D3A	
1	Wilkerson air line filter in comp. room	M31-06-F00BK98	



## BID FORM

### Bid 743-06 Contracted HVAC Maintenance, Blacksburg Transit

In Compliance with your Invitation for Bid, the undersigned hereby proposes to furnish the service and products, in strict accordance with the specifications, including all addenda hereto, and at the time of contract award, a performance bond in the amount of 100% of the base annual fee, in consideration of the price as set forth below.

Item			
Annual Routine Maintenance to include parts, labor, travel			
Hourly rates for non-routine maintenance- Refrigerant Mechanic; 8:00-5:00 Monday through Friday			
Hourly rates for non-routine maintenance – Mechanical Engineer; 8:00 – 5:00 Monday through Friday			
Hourly rates for non-routine maintenance- Refrigerant Mechanic; nights, weekends, holidays			
Hourly rates for non-routine maintenance – Mechanical Engineer; nights, weekends, holidays.			
Hourly rates for non-routine maintenance – “other” technicians; 8:00 – 5:00 Monday - Friday			
Hourly rates for non-routine maintenance – “other” technicians; nights, weekends, holidays.			
Parts not covered under routine maintenance. List price less discount percentage			

The Bidder acknowledges receipt of addenda (if any)



# \_\_\_\_\_ dated \_\_\_\_\_  
# \_\_\_\_\_ dated \_\_\_\_\_

**Submittals:**

Submit, with this bid, evidence of qualifications: Training certificates, certifications, references.

Submit, with this bid, service schedule for each piece of equipment listed in the specifications.

Company \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Business Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail \_\_\_\_\_

Terms: Net 30; Prompt Payment Discount: \_\_\_\_\_% Net \_\_\_\_\_ days

List any deviations to specifications:

List any alternates:



## **CONTRACTUAL OBLIGATIONS AND PROVISIONS – Materials and Supplies**

This proposed project is to be funded in part by the United States Government (Federal Transit Administration or FTA) and, accordingly, is subject to a number of Federal statutes and regulations. Applicable provisions are described herein and, where applicable, forms relevant thereto have been provided. It is understood that Federal requirements may change and the changed requirements will apply to a Project as required, unless the Federal Government determines otherwise.

### **A. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

- 1) The Town of Blacksburg and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- 2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **B. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- 1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.
- 2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- 3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **C. ACCESS TO RECORDS**

The Contractor agrees, and assures that each subcontractor at any tier of the Project agrees, to provide to the US Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, access to all records requested to conduct audits and inspections related to this contract that have not been awarded on the basis of competitive bidding, as required by 49 USC § 5325(a).

### **D. CIVIL RIGHTS**



The Contractor agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

- 1) Nondiscrimination in Federal Transit Programs. The Contractor agrees to comply, and assure the compliance of each subcontractor at any tier of the Project, with the provisions of 49 USC § 5332, which prohibits discrimination on the basis or race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- 2) Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assure the compliance of each subcontractor at any tier of the Project, with all requirements prohibiting discrimination on the basis or race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 USC § 2000d *et seq.*, and US DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21, and any implementing requirements FTA may issue.
- 3) Equal Employment Opportunity. The Contractor agrees to comply, and assure the compliance of each subcontractor at any tier of the Project, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e, and 49 USC § 5332 and any implementing requirements FTA may issue. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. Affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. The Contractor also agrees to comply with any implementing requirements FTA may issue. Failure by the Contractor to carry out the terms of the EEO program will be treated as a violation of the Contract or Agreement.
- 4) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities deemed by the US Department of Labor (US DOL) to qualify as “construction,” the Recipient agrees to comply, and assures the compliance of each subcontractor at any tier of the Project, with all applicable EEO requirements of US DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, which implements Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 USC § 2000(e) note, and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Project.
- 5) Disadvantaged Business Enterprise. The Contractor agrees to comply with section 1101(b) of TEA-21, 23 USC § 101 note, and US DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26. The Contractor agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any subcontract supported with Federal assistance derived from the US DOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor agrees to take all necessary and reasonable steps set forth in 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all subcontracts supported with Federal assistance derived from the US DOT. The Town of Blacksburg’s DBE program, as required by 49 CFR Part 26 and approved by the US DOT, is incorporated by reference and made part of the Contractual Agreement.



- 6) Nondiscrimination on the Basis of Sex. The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 *et seq.*, with implementing US DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance," 49 CFR Part 25, and with any implementing directives that US DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
- 7) Nondiscrimination on the Basis of Age. The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 USC §§ 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- 8) Access Requirements for Persons with Disabilities. The Contractor agrees to comply with all applicable requirements of 49 USC § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Contractor also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 as amended, 29 USC § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:
  - a. US DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
  - b. US DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
  - c. Joint US Architectural and Transportation Barriers Compliance Board (US ATBCB)/US DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
  - d. US DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
  - e. US DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
  - f. US General Services Administration (US GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
  - g. US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
  - h. US Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
  - i. US ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
  - j. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
  - k. Any implementing requirements FTA may issue.

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Blacksburg Transit deems appropriate.



## E. TERMINATION PROVISIONS

The Town of Blacksburg may terminate the contract for cause or for convenience after giving thirty (30) days written notice to the Contractor. The written notice shall include a statement of reasons for the termination.

### 1) Termination for Cause:

If the Contractor should substantially breach the Contract or fail to perform the services, or any portion thereof, required by the Contract, the Town of Blacksburg may terminate the Contract for cause by giving written notice as set forth above or may give the Contractor a stated period of time within which to remedy its breach of contract. If the Contractor shall fail to remedy the breach within the time allotted by the Town of Blacksburg, the Town of Blacksburg may terminate the Contract at any time thereafter upon written notice, effective immediately upon receipt. The Town of Blacksburg's forbearance in not terminating the contract shall not constitute a waiver of the Town of Blacksburg's right to terminate in the future for similar breaches or failures to perform. If the Contract is terminated for cause, the Contractor shall be responsible for all damages incurred by the Town of Blacksburg as a result of the Contractor's breach of contract or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement Contractor to fulfill the obligations of the Contract.

Any termination by the Town of Blacksburg for default, if determined by a court of competent jurisdiction not to have been justified as a termination for default shall be deemed a termination for the convenience of the Town of Blacksburg.

### 2) Termination for Convenience:

The Town of Blacksburg may terminate the Contract in whole or in part for convenience by delivering to the Contractor a written notice of termination as set forth above, specifying the extent to which performance under the Contract is terminated and the effective date of the termination. Upon receipt of such notice, the Contractor must stop work, including but not limited to work performed by subcontractors and consultants, at such time and to the extent specified in the notice.

If the contract is terminated for convenience, the Contractor shall be entitled to those fees earned for work performed in accordance with the Contract prior to the notice of termination. Thereafter, the Contractor shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the Contract which were terminated. The Contractor will be compensated for reasonable costs or expenses for delivery to the Town of Blacksburg of the products or the services for which the Contractor has or will receive compensation.

### 3) Delivery of Materials:

Any termination shall not relieve the Contractor of the obligation to deliver to the Town of Blacksburg all products or services for which the Contractor has been or will be compensated, including, but not limited to, the original drawings and specifications, copies of CADD diskettes or tapes, calculations, and analyses. Unless otherwise agreed to in writing, the Contractor shall deliver the materials to the Town of Blacksburg within thirty (30) days of



receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a material or substantial breach of contract.

4) Compensation Due the Contractor:

When the Contractor is terminated for convenience, the following method shall be utilized in computing amounts due the Contractor for services prior to termination.

- If terminated at the completion of a design phase or the bidding phase, the amount due shall be the cumulative total of the fees for the phases completed according to the Contract.
- If terminated prior to completion of a design phase or the bidding phase, the amount due shall be the sum of the previously completed phase fees plus a negotiated amount based on the portion of services provided for the phase not completed.
- Payment for the Additional Services portion of the fee shall be any portion of those services provided up through the notice of termination.

The Contractor shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after the last work is performed. All amounts invoiced are subject to deductions for amounts previously paid or for amounts due the Town of Blacksburg.

F. DEBARMENT AND SUSPENSION

The Contractor agrees to comply, and assures the compliance of each subcontractor at any tier of the project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note, and US DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," within 49 CFR Part 29.

G. BUY AMERICA

The Contractor agrees to comply with 49 USC § 5323(j), FTA regulations, "Buy America Requirements," 49 CFR Part 661, and implementing guidance FTA may issue.

H. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION

As the FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving this project, the Town of Blacksburg will notify FTA of any current or prospective major dispute, breach, default or litigation that affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Town of Blacksburg.

All disputes will be settled in accordance with Section 16-506 of the Code of the Town of Blacksburg.

I. LOBBYING

In accordance with 31 USC § 1352 and US DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, the Contractor must have provided a certification to the Town of Blacksburg that the Contractor has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or



employee of any Federal department or agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC § 1352.

#### J. CLEAN AIR ACT

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Contractor shall report each violation to the Town of Blacksburg and understands and agrees that the Town of Blacksburg will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

#### K. CLEAN WATER ACT

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC § 1251 *et seq.* The Contractor shall report each violation to the Town of Blacksburg and understands and agrees that the Town of Blacksburg will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

#### L. CARGO PREFERENCE

The Contractor agrees to comply with US Maritime Administration regulations, "Cargo Preference – US-Flag Vessels," 46 CFR Part 381, to the extent those regulations apply to the project.

#### M. FLY AMERICA

The Contractor understands and agrees that the Federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by US-flag air carriers to the extent service by US-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118, and with US GSA regulations, "Use of United States Flag Air Carriers," 41 CFR § 301.10.131 through 301.10.143.

#### N. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 *et seq.*

#### O. PROMPT PAYMENT MECHANISMS

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime contractor receives from Blacksburg Transit. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Blacksburg Transit. This clause applies to both DBE and non-DBE subcontracts.

#### P. RECYCLED PRODUCTS

To the extent applicable, the Contractor agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

#### Q. NATIONAL ITS ARCHITECTURE



The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206 (e) of TEA-21, 23 U.S.C. §502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.